

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CAROL TUCKER,

Plaintiff,

v.

US BANK NATIONAL ASSOCIATION,

Defendant.

CASE NO. C14-5796 RJB

ORDER DENYING APPLICATION
TO PROCEED IN FORMA
PAUPERIS, DENYING MOTION TO
DIRECT SERVICE BY U.S.
MARSHAL, AND DISMISSING
CASE

This matter comes before the court on plaintiff's application to proceed *in forma pauperis* (Dkt. 1), on plaintiff's motion requesting an order directing the U.S. Marshal to serve the summons and complaint (Dkt. 2), and on review of the complaint and cover sheet (Dkt. 1-1, at 1-5).

On October 6, 2014, plaintiff filed a civil complaint and an application to proceed *in forma pauperis* (IFP), that is, without paying the \$400 filing fee for a civil case. Dkt. 1. Plaintiff also filed a civil complaint (Dkt. 1-1, at 2-5), and a motion requesting an order directing the U.S. Marshal to serve the summons and complaint (Dkt. 2).

ORDER DENYING APPLICATION TO PROCEED
IN FORMA PAUPERIS, DENYING MOTION TO
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DISMISSING CASE- 1

1 **Standard for Granting Application for IFP.** The district court may permit indigent
 2 litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See*
 3 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to
 4 proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375
 5 U.S. 845 (1963).

6 A district court may deny leave to proceed *in forma pauperis* at the outset if it appears
 7 from the face of the proposed complaint that the action is frivolous or without merit.” *Minetti v.*
 8 *Port of Seattle*, 152 F.3d 1113 (9th Cir. 1998), quoting *Tripati v. First Nat'l Bank & Trust*, 821 F.
 9 2d 1368, 1370 (9th Cir. 1987).

10 **Plaintiff’s Application to Proceed IFP.** Plaintiff states that she has a monthly income
 11 of \$158.41 from a pension and \$979 from a disability payment. Dkt. 1, at 1. Plaintiff states that
 12 her transportation expenses are \$900 a month, and expenses for medicine are \$450. Dkt. 1, at 2.

13 **Review of the Complaint.** The court has carefully reviewed the complaint in this matter.
 14 Because plaintiff filed this complaint *pro se*, the court has construed the pleadings liberally and
 15 has afforded plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep’t*,
 16 839 F.2d 621, 623 (9th Cir.1988).

17 The complaint alleges that, in March of 2014, plaintiff was approved for an Ace
 18 Hardware US Bank VISA, with a \$3,500 credit limit; and that, on September 26, 2014, she
 19 logged onto the account and discovered that her credit limit had been lowered to \$2,600.
 20 Plaintiff claims that defendant US Bank National Association failed to provide her advance
 21 notice that her credit limit had been lowered, and that the reason given to her by Cardmember
 22 Services when she contacted the company consisted of false statements regarding her credit
 23 score, delinquencies, and credit history.

1 15 U.S.C. § 1637(i)(2) of the Truth in Lending Act (TILA) provides as follows:

2 In the case of any credit card account under an open end consumer credit plan, a creditor
3 shall provide a written notice of any significant change, as determined by rule of the
4 Bureau, in the terms (including an increase in any fee or finance charge, other than as
provided in paragraph (1)) of the cardholder agreement between the creditor and the
obligor, not later than 45 days prior to the effective date of the change.

5
6 Plaintiff contends that defendant failed to give her advance notice of the decrease in her
7 credit limit. However, TILA does not require an obligor to provide advance notice of a decrease
8 in a credit limit, unless an over-the-limit fee or penalty rate was imposed as a result of the
9 consumer exceeding the newly decreased credit limit. 12 C.F.R. § 226.9(c)(2)(vi). There are no
10 allegations in the complaint that an over-the-limit fee or penalty rate was imposed as a result of
11 plaintiff's exceeding the newly decreased credit limit. In fact, plaintiff alleged that she had "an
12 excellent payment record" on both of the US Bank accounts she had. Dkt. 1-1, at 3. Further, to
13 the extent that plaintiff claims that the decision to decrease her credit limit was based upon false
14 information and analysis, plaintiff has not alleged a plausible basis for federal jurisdiction over
15 such a claim.

16 This complaint is legally frivolous and fails to state a claim.

17 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is
18 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal
19 of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995). In this case, as
20 discussed above, any attempt by plaintiff to amend the complaint would be futile.

21 **Decision on Application to Proceed IFP.** It appears that plaintiff has the income to pay
22 the \$400 filing fee in this case. Plaintiff has made a choice to file this civil action. While the
23 costs of this action may place a burden on her resources, plaintiff appears to have sufficient
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1 funds to pay the filing fee. Further, based upon the above analysis of the deficiencies in the
 2 complaint, the court should deny plaintiff's application to proceed *in forma pauperis*.

3 **Motion Requesting Order to Direct Service by U.S. Marshal.** Plaintiff requests that
 4 the court direct that the U.S. Marshal serve the summons and complaint on defendant. This case
 5 is dismissed by this order. The request should be denied.

6 ***Sua Sponte Dismissal.*** A federal court may dismiss a case *sua sponte* pursuant to
 7 Fed.R.Civ.P. 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which relief
 8 may be granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) ("A trial
 9 court may dismiss a claim *sua sponte* under Fed.R.Civ.P. 12(b)(6). Such a dismissal may be
 10 made without notice where the claimant cannot possibly win relief."). *See also Mallard v.*
 11 *United States Dist. Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court
 12 would have the power to dismiss frivolous complaint *sua sponte*, even in absence of an express
 13 statutory provision). A complaint is frivolous when it has no arguable basis in law or fact.
 14 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). This case has no arguable basis in law
 15 or fact. The complaint should be dismissed as frivolous and for failure to state a claim.

16 **IFP on Appeal.** In the event that plaintiff appeals this order, and/or appeals dismissal of
 17 this case, IFP status should be denied by this court, without prejudice to plaintiff to file with the
 18 Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis*.

19 **Future filings.** Other than a Notice of Appeal, any filings in this case in the future will
 20 be docketed by the Clerk but not acted upon by the court.

21 Accordingly, it is hereby **ORDERED** that plaintiff's Application to Proceed *In Forma*
 22 *Pauperis* (Dkt. 1) is **DENIED**. Plaintiff's motion requesting that the court direct the U.S.
 23 Marshal to serve the summons and complaint (Dkt. 2) is **DENIED**. This case is **DISMISSED** as

1 frivolous and for failure to state a claim. In the event that plaintiff appeals this order, IFP status
2 is **DENIED** by this court, without prejudice to plaintiff to file with the Ninth Circuit U.S. Court
3 of Appeals an application to proceed *in forma pauperis*. Other than a Notice of Appeal, any
4 filings in this case in the future will be docketed by the Clerk but will not be acted upon by the
5 court.

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
7 to any party appearing *pro se* at said party's last known address.

8 Dated this 14th day of October, 2014.

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11 ROBERT J. BRYAN
12 United States District Judge
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